

Subpart C—Responsibilities of Participants Regarding Transactions

§417.332 What methods must I use to pass down requirements to participants in lower tier covered transactions with whom I intend to do business?

You as a participant must include a term or condition in lower tier covered transactions requiring lower tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by subpart C of this part.

Subpart D—Responsibilities of Department of Agriculture Officials Regarding Transactions

§417.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower tier covered transactions.

Subparts E–F [Reserved]

Subpart G—Suspension

§417.755 When will I know whether the USDA suspension is continued or terminated?

The suspending official must make a written decision whether to continue, modify, or terminate your suspension within 45 days of closing the official record. The official record closes upon the suspending official's receipt of final submissions, information and findings of fact, if any. The suspending official may extend that period for good cause. However, the record will remain open for the full 30 days, as called for in §180.725, even when you make a submission before the 30 days expire.

Subpart H—Debarment

§417.800 What are the USDA causes for debarment?

A Federal agency may debar a person for—

(a) Conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State anti-trust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as—

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before March 1, 1989, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;

(2) Knowingly doing business with an ineligible person, except as permitted under §180.135;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed

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the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 180.640 or of any settlement of a debarment or suspension action; or

(5) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701); or

(d) Any other cause of so serious or compelling a nature that it affects your present responsibility.

§ 417.865 How long may my debarment last?

(a) If the debarring official decides to debar you, your period of debarment will be based on the seriousness of the cause(s) upon which your debarment is based. Generally, debarment should not exceed 3 years. However, if circumstances warrant, the debarring official may impose a longer period of debarment.

(b) In determining the period of debarment, the debarring official may consider the factors in 2 CFR 180.860. If a suspension has preceded your debarment, the debarring official must consider the time you were suspended.

(c) If the debarment is for a violation of the provisions of the Drug-Free Workplace Act of 1988, your period of debarment may not exceed 5 years.

(d) The Secretary shall permanently debar from participation in USDA programs any individual, organization, corporation, or other entity convicted of a felony for knowingly defrauding the United States in connection with any program administered by USDA.

(1) *Reduction.* If the Secretary considers it appropriate s/he may reduce a debarment under this subsection to a period of not less than 10 years.

(2) *Exemption.* A debarment under this subsection shall not apply with regard to participation in USDA domestic food assistance programs. For purposes of this paragraph, participation in a domestic food assistance program does not include acting as an authorized retail food store in the Supple-

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mental Nutrition Assistance Program (SNAP), the Special Supplemental Nutrition Assistance Program for Women, Infants, and Children (WIC), or as a nonbeneficiary entity in any of the domestic food assistance programs. The programs include:

(i) Special Nutrition Assistance Program, 7 U.S.C. 2011, *et seq.*;

(ii) Food Distribution Program on Indian Reservations, 7 U.S.C. 2013(b);

(iii) National School Lunch Program, 42 U.S.C. 1751, *et seq.*;

(iv) Summer Food Service Program for Children, 42 U.S.C. 1761; Child and Adult Care Food Program, 42 U.S.C. 1766;

(v) Special Milk Program for Children, 42 U.S.C. 1772; School Breakfast Program, 42 U.S.C. 1773;

(vi) Special Supplemental Nutrition Program for Women, Infants, and Children, 42 U.S.C. 1786;

(vii) Commodity Supplemental Food Program, 42 U.S.C. 612c note;

(viii) WIC Farmers Market Nutrition Program, 42 U.S.C. 1786;

(ix) Senior Farmers' Market Nutrition Program, 7 U.S.C. 3007; and

(x) Emergency Food Assistance Program, 7 U.S.C. 7501, *et. seq.*

§ 417.870 When do I know if the USDA debarring official debars me?

(a) The debarring official must make a written decision whether to debar within 45 days of closing the official record. The official record closes upon the debarring official's receipt of final submissions, information and findings of fact, if any. The debarring official may extend that period for good cause. However, the record will remain open for the full 30 days, as called for in § 180.820, even when you make a submission before the 30 days expire.

(b) The debarring official sends you written notice, pursuant to § 180.615, that the official decided, either:

(1) Not to debar you; or

(2) To debar you. In this event, the notice:

(i) Refers to the Notice of Proposed Debarment;

(ii) Specifies the reasons for your debarment;

(iii) States the period of your debarment, including the effective dates; and